

offset by distribution expenses not reimbursed by the Contingent Deferred Sales Charge. In such circumstances, a portion of the Mortality and Expense Risk Charge might be viewed as providing for a portion of the costs relating to distribution of the Contracts. NEVLICO represents that there is a reasonable likelihood that the proposed distribution financing arrangements will benefit the Variable Account and Contract Owners. The basis for such a conclusion will be maintained in a memorandum at NEVLICO's principal office and available to the Commission upon request.

7. NEVLICO represents that the Variable Account will invest only in management investment companies that undertake, in the event the company adopts a plan to finance distribution expenses under Rule 12b-1 under the 1940 Act, to have such plan formulated and approved by the company's board of directors, a majority of whom are not "interested persons" of the company within the meaning of section 2(a)(19) of the 1940 Act.

Conclusion

Applicants assert that, for the reasons and the facts set forth above, the requested exemptions from Section 26(a)(2)(C) and 27(c)(2) of the 1940 Act to deduct the mortality and expense risk charge from the assets of the Variable account under the Contracts meet the standards in Section 6(c) of the 1940 Act. Applicants assert that the exemptions requested are necessary and appropriate in the public interest and consistent with the protection of investors and the policies and provisions of the 1940 Act.

For the commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,
Deputy Secretary.

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[Release No. 34-35388; File No. SR-CBOE-95-06]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated, Related to Retail Automatic Execution System

February 16, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on January 18, 1995, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the

Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE proposes to amend its rules to allow the Exchange's Control Room to turn off the Retail Automatic Execution System ("RAES"). The amendments would add an Interpretation to Exchange Rules 24.15 and 6.8. The text of the proposed rule change is available at the office of the Secretary, CBOE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE included statements concerning the purpose of and the basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries set forth in Sections (A), (B) and (C) below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to grant the Exchange's Control Room the authority to turn off RAES if there is a system malfunction that affects the Exchange's ability to disseminate or update market quotes. Specifically, the proposal would add a rule interpretation to Exchange Rules 24.15 and 6.8 to grant the senior person then in charge of the Exchange's Control Room the authority to turn off RAES if there is a system malfunction that affects the Exchange's ability to disseminate or update market quotes.

When RAES receives an order, the system automatically will attach to the order its execution price, determined by the prevailing market quote at the time of the order's entry into the system. A buy order will pay the prevailing market quote for an offer and a sell order will sell at the prevailing market quote for a bid. A market maker who has signed on as a participant in RAES will be designated as a contra-broker on the trade. Trades are assigned to these

participating market makers on a rotating basis. Therefore, by agreeing to participate in RAES, a market maker is automatically assigned trades based on the prevailing market quote that is then being disseminated. Consequently, it is important that the prevailing market quote be accurate, because otherwise market makers participating in RAES may be assigned trades at prices other than the actual prevailing market quote.

In addition, if there is a quote dissemination problem such that incorrect quotes are being displayed, it could result in a customer's order being filled at a price other than the quote the customer sees on display.

The proposed interpretations are necessary to prevent market makers from being assigned trades based on inaccurate or "stale" market quotes and to prevent customer orders from being filled based on such inaccurate or "stale" market quotes. The proposed Interpretations are also necessary to prevent a situation where customers' orders are filled at prices other than the prices the customers see displayed. Pursuant to the proposed interpretations, the senior person then in charge of the Exchange's Control Room will have the ability to act quickly to turn off RAES if there is a system malfunction that affects the Exchange's ability to disseminate or update market quotes. Since RAES trades are based on the current disseminated quote, RAES trades would be based on inaccurate or "stale" quotes during a system malfunction that interferes with dissemination of current quote information. The Exchange believes it is important for the Control Room to have this power to turn off RAES since the Control Room will most likely learn of the system malfunction before Floor Officials or other Exchange Staff and consequently the Control Room can act in a timely manner to prevent trades based on "stale" market quotes.

If RAES is turned off, the orders that would have been routed to RAES will be re-routed to the Floor Broker routing printer in the trading crowd or to the member firm booths. Where the order is rerouted depends upon the parameters member firms have set for their customers' orders prior to entering the orders onto RAES.¹

¹ CBOE understands that when determining order parameters for routing purposes, the member firms look to (1) the size of the order, (2) whether the series is on RAES, and (3) whether it is a market order or an immediately executable limit order. Telephone conversation between Edward Joyce, CBOE, Michael Meyer, Attorney, Schiff, Hardin, and Waite, Michael Walinskas, Branch Chief, Office of Market Supervision ("OMS"), Division of Market Regulation ("Division"), Commission, and John

Pursuant to the proposed interpretations, once the system malfunction has been corrected and the market quotes have been updated, either the senior person then in charge of the Exchange's Control Room, or the Order Book Official, or the RAES Supervisor may re-start RAES.

Conclusion

CBOE believes that the proposed rule change is consistent with and further the objectives of Section 6(b)(5) of the Act, in that the rules change is designed to perfect the mechanisms of a free and open market and to protect investors and the public interest by enabling the Control Room to turn off RAES to prevent trades based on inaccurate market quotes.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule

change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of CBOE. All submissions should refer to file number SR-CBOE-95-06 and should be submitted by March 16, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²

Margaret H. McFarland,

Deputy Secretary.

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[Release No. 34-35389; File No. SR-NASD-94-78]

Self-Regulatory Organizations; Order Granting Accelerated Approval of a Proposed Rule Change by the National Association of Securities Dealers, Inc., Relating to Exercise Cut-Off Procedures for Expiring Equity Options Contracts

February 16, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² on December 23, 1994, the National Association of Securities Dealers, Inc. ("NASD") submitted to the securities and exchange Commission ("Commission") a proposed rule change relating to the exercise procedures for expiring equity options contracts. The proposal was published for comment in the **Federal Register** on January 25, 1995.³ No comments were received on the proposed rule change. This order approves the proposed rule change.

Currently, with regard to expiring standardized equity options, Section 63 of the NASD's Uniform Practice Code ("Practice Code") provides that NASD members and their customers are required to indicate their exercise decisions to clearing members no later than 5:30 p.m. (E.S.T.) on the business day immediately prior to the expiration date of the options ("Exercise Cut-Off

Time").⁴ This is the latest time by which an exercise instruction⁵ may be: (1) Prepared by a clearing member for positions in its proprietary trading account; (2) accepted by a clearing member from a non-clearing member; or (3) accepted by a member from any customer.⁶

The only exceptions to the Exercise Cut-Off Times contained in Section 63 of the Practice Code are: (1) To remedy mistakes or errors made in good faith; (2) to take appropriate action as the result of a failure to reconcile an unmatched option transaction; (3) where exceptional circumstances relating to a customer's or member's ability to communicate exercise instructions to a member (or a member's ability to receive such exercise instructions) prior to the Exercise Cut-Off Time warrant such action; and (4) with respect to options contracts in an account maintained for another member in which only positions of customers of such other member are carried. Members are required to prepare a memorandum of every exercise instruction received from a customer stating the time when such instruction was received. In addition, in the event a member receives and acts on an exercise instruction pursuant to one of the exceptions noted above, the member must prepare a memorandum setting forth the circumstances giving rise to the exception. If the member is relying on either the first or the third exception described above, the member must promptly file a copy of the memorandum with the NASD.

Thus, it is presently a violation of Section 63 of the Practice Code for clearing members to accept exercise instructions after the Exercise Cut-Off Time, except in reliance on one of the exceptions noted above. Because

⁴ Generally, the rules of the options exchanges provide that equity options may be traded up until the close of business on the last business day before expiration, which is generally the third Friday of the expiration month ("Expiration Friday"). See, e.g. CBOE Rule 11.1 and Phlx Rule 1042.

⁵ For customers, an exercise instruction is a notice delivered to a member to exercise an option. For a clearing member of The Options Clearing Corporation ("OCC") or a market maker or floor broker on a national options exchange, an exercise instruction is a notice to OCC to exercise an option that would not be automatically exercised pursuant to OCC's exercise-by-exception procedure ("OCC Rule 805"), or not to exercise an option that would otherwise be automatically exercised pursuant to OCC Rule 805. See *infra* note 9. The OCC has separate rules regarding the cut-off time by which exercise notices must be delivered to OCC by OCC clearing members. The proposed rule change does not in any way affect OCC rules.

⁶ In most cases, exercise instructions are electronically transmitted to OCC clearing members through the Clearing Management and Control System ("C/MACS").

² 17 CFR 200.30-3(a)(12) (1994).

¹ 15 U.S.C. 78s(b)(1) (1988).

² 17 CFR 240.19b-4 (1993).

³ See Securities Exchange Act Release No. 35235 (January 18, 1995), 60 FR 4936 (January 25, 1995).